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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 79

LEHIGH VALLEY COOPERATIVE FARMERS, INC., ET AL., *Petitioners,*

v.

UNITED STATES, ET AL., *Respondents*

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE, AND BRIEF, OF DAIRYMEN'S LEAGUE COOPERATIVE ASSOCIATION, INC., ET AL.

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Pursuant to Rule 42(3) the organizations listed below, by their attorneys, Frederic P. Lee and John A. Cardon, move this Court for leave to file jointly a brief *amici curiae* in support of Respondents, the United States of America and the Secretary of Agriculture:

Dairymen's League Cooperative Association, Inc. New York, New York
Eastern Milk Producers Co-operative Association, Inc., East Syracuse, New York
Metropolitan Cooperative Milk Producers Bargaining Agency, Inc., Syracuse, New York

Mutual Federation of Independent Cooperatives, Inc., Syracuse, New York
United Milk Producers Cooperative Association of New Jersey, Trenton, New Jersey
Connecticut Milk Producers Association Hartford, Connecticut
Independent Dairy Farmers Association, Inc. Fort Lauderdale, Florida
Mississippi Milk Producers Association Jackson, Mississippi
New England Milk Producers' Association Boston, Massachusetts
Ohio Milk Producers Federation Columbus, Ohio
Texas Milk Producers Federation New Braunfels, Texas
Twin Ports Co-Op Dairy Association Superior, Wisconsin
United Dairymen's Association Seattle, Washington
United Farmers of New England, Inc. Boston, Massachusetts

The Respondents consented to the filing by the Applicants of a brief *amici curiae,* a copy of which is attached hereto. The Petitioners refused such consent, although requested by the Applicants. The interest of the Applicants and the reasons for this motion are as follows:

(1) The first five named Applicants are subject to the Federal Order here in question and have a direct interest in the litigation. Their membership totals approximately 37,000 producers in the States of New York, Pennsylvania, New Jersey, Massachusetts and Vermont. This represents about 75% of the more than 49,000 producers whose milk is regulated under the Federal Order. The first three named Applicants

participated in all hearings held by the Secretary of Agriculture concerning the need for the amendment which made Petitioners subject to the Federal Order and were permitted to intervene in the review proceedings before the Judicial Officer.

By order of the District Court below, Petitioners, Lehigh and Sunerest, are required, *pendente lite*, to make compensatory payments into the registry of that Court. As of July 31, 1961, the District Court held approximately $726,000. In the event this Court affirms the decision of the Court of Appeals below, the said $726,000 will be paid to the Market Administrator and distributed through the equalization fund to the producers whose milk is subject to the Federal Order. On the other hand, if the Court reverses the Court of Appeals below, the members of these five Applicants will be deprived of said moneys.

(2) The Federal Order is complementary to New York Milk Order No. 126 and New Jersey Milk Order No. 57-3. The three Orders are identical in all material respects, including compensatory payment provisions. All three Orders are jointly and concurrently administered by the Market Administrator to cover the totality of commerce in the marketing area. (See Br., pp. 9-11) The compensatory payments in the registry of the District Court are payable by Lehigh and Sunerest to the Market Administrator and the equalization fund not solely under the Federal Order, the New York Order or the New Jersey Order but by virtue of the concurrent and joint operation of all three Orders. If the provisions of the Federal Order are held invalid, then the validity of these same compensatory payments made under the State Orders must

be determined. The Applicants' Brief deals specifically with the questions arising out of the State Orders.

(3) The last nine named Applicants have approximately 39,000 members located in the States of Maine, Vermont, New Hampshire, Rhode Island, Massachusetts, Connecticut, New York, Pennsylvania, Ohio, Indiana, Michigan, Wisconsin, Minnesota, West Virginia, Kentucky, Florida, Mississippi, Texas, Oklahoma, New Mexico, Washington, and Idaho. Although their members are not under the complementary Order involved here and have no monetary interest in the amount in the registry of the District Court below, the vast majority are under Federal milk marketing orders containing compensatory payment provisions comparable to those in issue. A holding by this Court that the compensatory payment provisions in the Order in question are invalid will adversely affect the milk orders directly involving these nine Applicants or their members.

(4) There is pending before the United States Court of Appeals for the Sixth Circuit the case of *Lawson Milk Co.* v. *Benson*, 187 F. Supp. 66 (N.D. Ohio, 1960), involving the validity of the compensatory payment provisions of Federal Milk Marketing Order No. 75 under circumstances similar to those presented here. Three members of Ohio Milk Producers Federation (Akron Milk Producers Inc., Stark County Milk Producers Association, and Milk Producers Federation of Cleveland) represent producers whose milk is marketed under Order No. 75 and have been granted permission to file briefs in that case. Since a decision has been deferred until the instant case is decided, these organizations have a direct interest in the affirmance of the decision of the Court of Appeals below.

(5) There is pending before the United States Court of Appeals for the Second Circuit the case of *Knudsen Bros. Dairy, Inc.* v. *Benson* (No. 26698), on appeal from the District Court of Connecticut, involving the validity of compensatory payment provisions of Federal Milk Marketing Order No. 96 similar to those in dispute in the instant case. The first four named Applicants and New England Milk Producers Association and Connecticut Milk Producers Association, filed briefs *amici curiae* in that case. Milk marketed by New England Milk Producers Association represents approximately 75% of the total volume marketed under Order No. 96. The *Knudsen* case was argued on May 4, 1961, but a decision has not been announced. It would appear from the delay that action taken by this Court in the instant case will have a direct bearing on that litigation.

(6) The granting of this motion will not delay or prejudice the adjudication of the rights of the original parties.

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